

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

H

1

HOUSE BILL 907

Short Title: Mediated Settlement/Family Issues.

(Public)

Sponsors: Representatives Baddour, Hackney (Cosponsors); Bonner, Boyd-McIntyre, Braswell, Dedmon, Easterling, Gamble, Goodwin, Hensley, R. Hunter, Hurley, Insko, Mercer, Moore, Morris, Mosely, Nichols, Russell, Saunders, Sutton, Tolson, Wainwright, Warwick, Watson, C. Wilson, and Womble.

Referred to: Judiciary II.

April 10, 1997

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A PILOT PROGRAM OF MEDIATED SETTLEMENT
3 CONFERENCES IN DISTRICT COURT ACTIONS INVOLVING CERTAIN
4 FAMILY ISSUES.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 7A of the General Statutes is amended by adding the
7 following new section to read:

8 "**§ 7A-38.4. Mediated settlement conferences in district court actions.**

9 (a) The purpose of this section is to authorize the design, implementation, and
10 evaluation of a pilot program in which parties to district court actions involving equitable
11 distribution, alimony, and support may be required to attend a pretrial mediated
12 settlement conference or other settlement procedure.

13 (b) The Dispute Resolution Commission established under the Judicial Department
14 shall, with the advice of the Director of the Administrative Office of the Courts, design
15 the pilot program and its coordination with existing settlement programs. The pilot
16 program may be implemented in any judicial district if the Director of the Administrative
17 Office of the Courts and the chief district court judge of that district determine that use of

1 the program is appropriate. A pilot program may be terminated by the Director of the
2 Administrative Office of the Courts after consultation with the chief district court judge.

3 (c) The Supreme Court may adopt rules to implement this section. The definitions
4 in G.S. 7A-38.1(b)(2) and (b)(3) apply to this section.

5 (d) The chief district court judge of any participating district may order a mediated
6 settlement conference for any action pending in the district involving issues of equitable
7 distribution, alimony, or child or spousal support. The chief district court judge may by
8 local rule order all such cases, not otherwise exempted by Supreme Court rule, to
9 mediated settlement conference.

10 (e) The parties to a district court action in which a mediated settlement conference
11 is ordered, their attorneys, and other persons or entities with authority, by law or by
12 contract, to settle the parties' claims shall attend the mediated settlement conference, or
13 other settlement procedure ordered by the court, unless excused by the rules of the
14 Supreme Court or by order of the chief district court judge. Nothing in this section shall
15 require any party or other participant in the conference to make a settlement offer or
16 demand which it deems is contrary to its best interests.

17 (f) Any person required to attend a mediated settlement conference or other
18 settlement procedure ordered by the court who, without good cause, fails to attend in
19 compliance with this section and the rules adopted under this section, shall be subject to
20 any appropriate monetary sanction imposed by a chief or presiding district court judge,
21 including the payment of attorneys' fees, mediator fees, and expenses incurred in
22 attending the conference. If the court imposes sanctions, it shall do so, after notice and
23 hearing, in a written order, making findings of fact and conclusions of law. An order
24 imposing sanctions shall be reviewable upon appeal where the entire record as submitted
25 shall be reviewed to determine whether the order is supported by substantial evidence.

26 (g) The parties to a district court action in which a mediated settlement conference
27 is to be held pursuant to this section shall have the right to designate a mediator. Upon
28 failure of the parties to designate within the time established by the rules of the Supreme
29 Court, a mediator shall be appointed by the chief district court judge or its designee.

30 (h) The chief district court judge, at the request of and with the consent of the
31 parties, may order the parties to attend and participate in any other settlement procedure
32 authorized by rules of the Supreme Court or by local district court rules, in lieu of
33 attending a mediated settlement conference. Neutral third parties acting pursuant to this
34 section shall be selected and compensated in accordance with the rules or pursuant to
35 agreement of the parties. Nothing herein shall prohibit the parties from participating in
36 other dispute resolution procedures, including arbitration, to the extent authorized under
37 State or federal law.

38 (i) Mediators and other neutrals acting pursuant to this section shall have judicial
39 immunity in the same manner and to the same extent as a judge of the General Court of
40 Justice, except that mediators and other neutrals may be disciplined in accordance with
41 enforcement procedures adopted by the Supreme Court pursuant to G.S. 7A-38.2.

42 (j) Costs of mediated settlement conferences and other settlement procedures shall
43 be borne by the parties. Unless otherwise ordered by the court or agreed to by the parties,

1 the mediator's fees shall be paid in equal shares by the parties. The rules adopted by the
2 Supreme Court implementing this section shall set out a method whereby parties found
3 by the court to be unable to pay the costs of settlement procedures are afforded an
4 opportunity to participate without cost.

5 (k) Evidence of statements made and conduct occurring in a mediated settlement
6 conference shall not be subject to discovery and shall be inadmissible in any proceeding
7 in the action or other actions on the same claim. However, no evidence otherwise
8 discoverable shall be inadmissible merely because it is presented or discussed in a
9 mediated settlement conference.

10 No mediator, or other neutral conducting a settlement procedure pursuant to this
11 section, shall be compelled to testify or produce evidence concerning statements made
12 and conduct occurring in a mediated settlement conference or other settlement procedure
13 in any civil proceeding for any purpose, except proceedings for sanctions under this
14 section, disciplinary hearings before the State Bar or any agency established to enforce
15 standards of conduct for mediators, and proceedings to enforce laws concerning juvenile
16 or elder abuse.

17 (l) The Supreme Court may adopt standards for the certification and conduct of
18 mediators and other neutrals who participate in the mediated settlement conference
19 program established pursuant to this section. The standards may also regulate mediator
20 training programs. The Supreme Court may adopt procedures for the enforcement of
21 those standards. The administration of mediator certification, regulation of mediator
22 conduct, and decertification shall be conducted through the Dispute Resolution
23 Commission. An administrative fee not to exceed two hundred dollars (\$200.00) may be
24 charged by the Administrative Office of the Courts to applicants for certification and
25 annual renewal of certification for mediators and mediator training programs operation
26 under this section. The fees collected may be used by the Director of the Administrative
27 Office of the Courts to establish and maintain the operations of the Commission and its
28 staff.

29 (m) Nothing in this section or rules adopted pursuant to it shall restrict the right to
30 jury trial."

31 Section 2. The Administrative Office of the Courts may solicit funds from
32 private sources to design, establish, conduct, and evaluate the pilot program authorized
33 under Section 1 of this act.

34 Section 3. The Administrative Office of the Courts shall evaluate the pilot
35 program authorized under this act and shall report its findings and recommendations to
36 the 1999 General Assembly upon its convening.

37 Section 4. The pilot program designed by the Dispute Resolution Commission
38 becomes effective January 1, 1998, and expires September 1, 1999.

39 Section 5. This act is effective when it becomes law.